

BEFORE THE DEPARTMENT OF CORRECTIONS  
OF THE STATE OF MONTANA

In the matter of the adoption of New     ) NOTICE OF ADOPTION  
Rules I through V pertaining to the     )  
education of exonerated persons     )

TO: All Concerned Persons

1. On February 23, 2012, the Department of Corrections published MAR Notice No. 20-26-51 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 334 of the 2012 Montana Administrative Register, Issue Number 4.

2. On March 16, 2012, a public hearing was held on the proposed adoption of the above-state rules. Several comments were received by the March 20, 2012, deadline.

3. The department has thoroughly considered the comments and testimony received. A summary of the comments and testimony received and the department's responses are as follows:

COMMENT #1: Ms. Jessie McQuillan, Executive Director of the Montana Innocence Project commented that New Rules III and V are based on a reimbursement system, whereas a reimbursement system is not feasible for an exonerated person who is just leaving prison.

RESPONSE #1: The comment is well taken and the department has amended New Rules III and V to reflect a system of payments to the exonerated person, not reimbursements.

COMMENT #2: Ms. McQuillan commented that New Rule II limiting the educational benefits to ten years creates an injustice to Mr. Bromgard who was exonerated in 2002.

RESPONSE #2: The department regrets that Mr. Bromgard's opportunity to receive benefits under this program terminates in 2012. The department, however, is bound by 53-1-214, MCA, that specifies the privilege of receiving educational aid "remains active for 10 years after the release of a person" who is exonerated. The department will not amend the rule.

COMMENT #3: Ms. McQuillan commented that New Rule III does not allow a person exonerated, by means other than DNA testing, to receive educational aid, whereas persons are sometimes exonerated for other reasons.

RESPONSE #3: 53-1-214, MCA, does not allow the department to grant educational aid to any other offenders besides ones exonerated by DNA testing. The persons entitled to aid are ones “whose judgment of conviction was overturned by a court based on the results of postconviction forensic DNA testing....” The department will not amend the rule.

COMMENT #4: David Niss, legislative staff attorney for the Law and Justice Interim Committee commented that New Rule III(5) does not conform to 53-1-214, MCA. The statute does not limit the degrees the exonerated person can attain whereas the proposed rule limits the degree to a bachelor’s or master’s degree.

RESPONSE #4: The comment is well taken and the department will amend the rule to reflect that the exonerated person may attain any degree.

4. The department has adopted NEW RULE I (20.26.101), II (20.26.102), and IV (20.26.104) exactly as proposed.

5. The department adopts NEW RULE III (20.26.103) and NEW RULE V (20.26.105) with the following changes from the original proposal, new mater underlined, deleted matter interlined.

NEW RULE III APPLICATION AND DESIGNATION (1) remains the same.

(2) the application must be received by the department 30 days before the person incurs the expense for which the person request ~~reimbursement~~ payment.

(3) through (4) remain the same.

(5) The designation of exonerated person entitles the exonerated person to receive benefits for up to five years from the time the exonerated person begins an educational program that is reimbursed under these rules, but in no instance will the department reimburse the exonerated person beyond the time the exonerated person attains a ~~bachelor’s or master’s~~ degree or ten years after the exonerated person was release from incarceration.

NEW RULE V PROCEDURE TO RECEIVE BENEFITS (1) remains the same.

(2) Upon establishment of admission or enrollment, the department will establish a ~~reimbursement~~ payment plan with the exonerated person.

(2)(a) remains the same.

(b) The department will maintain a form for the exonerated person to estimate expenses for books. Expenses for books will be ~~reimbursed~~ paid to the exonerated person with presentation of ~~a proper receipt~~ the appropriately executed form that outlines the necessary books and their cost.

(c) and (3) remain the same.

/s/ Diana L. Koch  
Diana L. Koch  
Rule Reviewer

/s/ Mike Ferriter  
Mike Ferriter, Director  
Department of Corrections

Certified to the Secretary of State July 30, 2012